79-6743

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SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

GLOVER ALLISON,

~~Petitioner and~~ Appellant,

- Versus -

FULTON-DEKALB HOSPITAL AUTHORITY,

~~Respondent and~~ Appellee.

~~ON PETITION FOR WRIT OF CERTIORARI AND~~

APPEAL FROM THE SUPREME COURT OF GEORGIA

CASE NUMBER 35689

ATTACHMENTS TO ~~PETITION FOR WRIT OF CERTIORARI AND~~ JURISDICTIONAL STATEMENT

KENNETH G. LEVIN (LEAD COUNSEL)
RICHARD K. GREENSTEIN
ATTORNEYS FOR APPELLANT

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construction would fly in the face of the General Assembly's clear expression of intent to trigger the 1973 Act by appropriating $26,920 for that purpose.

At this point, with the 1973 Act having taken effect on January 1, 1975, the General Assembly reenacted the former Bank Share Tax Act, effective January 1, 1975. Ga. L. 1975, pp. 147, 152-153 (the 1975 Act). The dispute between C&S and the city and county is whether the "no tax on capital clause" in the 1975 Act, Ga. L. 1975 at p. 149, exempts national banks such as C&S from all ad valorem taxes other than those authorized by the Act. C&S takes the position that "capital" in this phrase means "capital assets" and exempts all property of the bank except real property. The city and the county argue that the "no tax on capital" provision is merely a recital (i.e., is surplusage) or, alternatively, that capital as used therein means only capital stock. Although the word "capital" is not defined in the Act and more than one construction is arguable, in light of the legislative history we hold that "capital" as used in the "no tax on capital" clause in the 1975 Act refers to capital assets; thus the 1975 Act does exempt C&S from ad valorem taxes levied on its personal property. If the General Assembly had intended to alter the long standing effect of the "no tax on capital" clause, it no doubt would have done so in clear and express terms. By using the historical language, it evidenced its intent that banks be given the same tax treatment they historically had received.

The city and the county argue that the express exemption of banks from the assessments authorized by the Intangible Property Tax Act of 1937 militates against this construction. Ga. L. 1937-1938, Ex. Sess., pp. 156, 158. But this express exemption was necessary to avoid a possible repeal by implication of the banks' pre-existing exemption under the Bank Share Tax Act.

The city and county also argue that the General Assembly's 1976 amendments expressly recreating the banks' exemption from personal property taxes, Ga. L. 1976, pp. 405, 407, 408, establish that the 1975 Act provided no such exemption. In our view, the General Assembly by enacting this amendment was merely clarifying the 1975 Act in response to the attempted

assessment of the bank's personal property. We view this amendment as reenacting the Bank Share Tax Act rather than as undercutting it. We find that it was the intent of the General Assembly in the 1975 Act, as it was in the 1976 Act, not to tax national banks to the extent now authorized by Congress.

The trial court's order granting summary judgment to the City of Atlanta and to Fulton County must be reversed, and an order granting summary judgment entered on the motion filed by C&S.

Judgment reversed. All the Justices concur, except Marshall, J., who concurs in the judgment only, and Nichols, C.J., who is disqualified.

ARGUED OCTOBER 10, 1979 — DECIDED FEBRUARY 19, 1980 — REHEARING DENIED MARCH 13, 1980.

Ad valorem tax dispute. Fulton Superior Court. Before Judge Hicks.

Alston, Miller & Gaines, G. Conley Ingram, Franklin R. Nix, Michael G. Wasserman, for appellant.

James A. Barnett, Harold T. Daniel, Jr., for appellees.

35689. ALLISON v. FULTON-DEKALB HOSPITAL AUTHORITY.

HILL, Justice.

In February, 1975, Fulton-DeKalb Hospital Authority, operator of Grady Memorial Hospital, sued the defendant for hospital expenses incurred by his 16-year-old daughter the previous August during the birth of an illegitimate child.

The defendant answered with a general denial, but amended the answer more than four years later to include a constitutional challenge to Georgia's paternal child support statute, Code § 74-105, under the rationale of Orr v. Orr, 440 U. S. 268 (99 SC 1102, 59 LE2d 306) (1979), decided shortly before by the United States Supreme

Court.

The Georgia statute, Code § 74-105 (revised effective April 4, 1979, Ga. L. 1979, pp. 466, 492), provided that the father is under a duty to provide for the maintenance, protection and education of his child until majority. The trial court, sitting without a jury, concluded that the constitutional defense should not be given retroactive effect and that the father was nonetheless under a common law duty of support in the absence of statute. The trial court further concluded that the hospital had made a sufficient showing to sustain its case including a showing that the defendant's minor daughter was not emancipated. The defendant's motion for a new trial was denied and he appeals.

1. Defendant's first enumeration of error alleges that the trial court erred in overruling his constitutional attack. Constitutional challenges must be raised at the first opportunity. *Brackett v. State*, 227 Ga. 493 (181 SE2d 380) (1971). Constitutional challenges should be raised as soon as the law which is subject to constitutional objection comes to the attention of the challenger's attorney. 5 EGL 530, Constitutional Law, § 182.

In this case the original answer was filed March 10, 1975, and was not amended to include the equal protection challenge until March 23, 1979, after the March 5, 1979, decision in Orr, supra. At least four continuances had been obtained during the four-year period. The record clearly shows that defendant had an ample opportunity to ascertain the nature of the hospital's claim and to challenge it before the Orr decision.

In April, 1976, the hospital answered interrogatories showing that its patient had been 16 years old at time of admission, that there had been no express agreement by anyone to pay the charges for her medical treatment, and that the defendant had been billed for his daughter's care because he was her father. At this point the law on which the hospital's claim was based was or certainly should have been known to the challenger's attorney. Yet the constitutional question was not raised until another 2 years and 11 months had passed. A defendant will not be allowed to delay asserting his defenses indefinitely in

hopes that a decision will be rendered which provides him with an arguable constitutional defense. We find that the constitutional question was not timely raised in this case.

2. Defendant contends that the trial court erred in finding that the hospital had proved the elements of its case. Specifically, defendant alleges that the hospital failed to prove that defendant was the father of the patient, that the value of the services rendered was reasonable and that the daughter was not emancipated.

This case was tried before the court without a jury. The trial judge entered findings of fact and conclusions of law. Such findings of fact shall not be set aside on appeal unless they are shown by the appellant to be clearly erroneous. Code Ann. § 81A-152 (a). The findings of fact entered by the trial judge in this case have not been shown to be clearly erroneous.

3. Defendant's final enumeration of error alleges that the trial court erred in finding that Code § 74-9901 (placing "lying in" expenses on the putative father of the illegitimate child), being specific, did not supplant the father's general statutory duty to pay medical expenses for his unmarried minor daughter, Code § 74-105. Code § 74-9901 is a criminal statute which provides that the putative father of an illegitimate child will be guilty of a misdemeanor when he fails to give lawfully prescribed security for enumerated expenses, including the lying in expenses of the mother. The statute does not show that the putative father is solely responsible for such expenses. The trial court properly interpreted the law and refused to discharge the defendant from liability for maternity expenses incurred by his daughter.

Judgment affirmed. All the Justices concur, except Jordan, J., who dissents to Division 1.

ARGUED JANUARY 15, 1980 — DECIDED FEBRUARY 26, 1980 — REHEARING DENIED MARCH 13, 1980.

Action on account; constitutional question. Fulton State Court. Before Judge Beasley.

Richard K. Greenstein, for appellant.

Clerk's Office, Supreme Court of Georgia

DEAR SIR: ATLANTA 3/13/80

The motion for a rehearing was denied today:

Case No. 35689 Allison v. Fulton-DeKalb Hospital Auth. t/a Grady Memorial Hospital

Jordan, J., dissents.

Yours very truly,
MRS. JOLINE B. WILLIAMS, Clerk

IN THE SUPREME COURT OF THE STATE OF GEORGIA

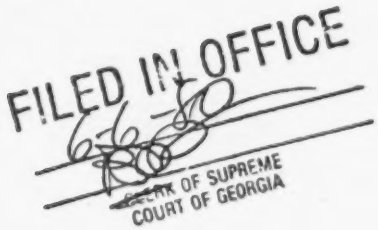
GLOVER ALLISON,

Appellant

-Versus- NO. 35689

FULTON-DEKALB HOSPITAL AUTHORITY, T/A GRADY MEMORIAL HOSPITAL,

Appellee



NOTICE OF APPEAL

GLOVER ALLISON hereby appeals to the Supreme Court of the United States from the opinion and judgment of this Court of February 28, 1980, deciding the appeal in the above-styled case, and from this Court's denial of his Motion for Rehearing by order dated March 13, 1980. This appeal is taken pursuant to 28 U.S.C. §1257(2). At the time of the filing of his jurisdictional statement, Appellant will seek to proceed in forma pauperis.

This 6th day of June, 1980.

Richard K. Greenstein
RICHARD K. GREENSTEIN

Kenneth G. Levin (by RKG)
KENNETH G. LEVIN

151 Spring St., N.W.
Atlanta, Georgia 30335
524-5811

Attorneys for Appellant

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing Notice of Appeal upon counsel for Appellee by depositing it in the United States Mail with adequate postage affixed thereto, addressed to:

Robert S. Travis
Curtis M. Cook
Attorneys at Law
Suite 203-A, Duncan Square
1961 North Druid Hills Road, N.E.
Atlanta, Georgia 30329

This 6 day of June, 1980.

/s/
RICHARD K. GREENSTEIN
Attorney for Appellant

IN THE SUPREME COURT OF THE STATE OF GEORGIA

FILED IN OFFICE
3-7-80
CLERK OF SUPREME COURT OF GEORGIA

GLOVER ALLISON,

Appellant,

- Versus -

NO.: 35689

FULTON-DEKALB HOSPITAL AUTHORITY T/A GRADY MEMORIAL HOSPITAL,

Appellee.

MOTION FOR REHEARING

RICHARD K. GREENSTEIN
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Phone: (404) 524-5811
ATTORNEY FOR APPELLANT

This is an appeal from a judgment against Appellant for medical expenses allegedly incurred by his minor daughter. Among Appellant's enumerated errors was a challenge to the trial court's ruling upholding the constitutionality of the statute upon which Appellee's claim was based.

Although Appellant's constitutional attack was specifically raised in his amended answer prior to the first consideration of this case by the lower court, this Court held that the raising of the constitutional defense was not timely. (A copy of this Court's opinion is attached hereto.)

Appellant seeks rehearing of this appeal on the following grounds:

1. Having ruled that Appellant did not timely raise his constitutional defense in this litigation, this Court did not have jurisdiction to consider the other errors raised by Appellant and the appeal should be transferred to the Court of Appeals.

2. This Court's ruling that Appellant's constitutional defense was not timely, although it was raised in his amended answer prior to the first consideration of the case by the lower court, is contrary to prior decisions of this Court.

3. The ruling of this Court that Appellant is not entitled to consideration of his constitutional defense, although it was raised in his amended answer prior to the first consideration of this case by the lower court, denies Appellant due process of law in violation of the Fourteenth Amendment to the United States Constitution.

4. This Court's ruling that Appellant is not entitled to consideration of his constitutional defense, although that defense was raised in his amended answer prior to the first

consideration of the case by the lower court, denies Appellant rights available to other similarly situated persons and, therefore, deprives him of equal protection of the laws in violation of the equal protection clause of the Fourteenth Amendment to the United States Constitution.

ARGUMENT AND CITATION OF AUTHORITIES

A. Having ruled that Appellant did not timely raise his constitutional defense in this litigation, this Court did not have jurisdiction to consider the other errors raised by Appellant and the appeal should be transferred to the Court of Appeals.

Appellant's enumerated errors in this appeal fall essentially into three categories: (1) that the statute upon which Appellee's claim is based is unconstitutional; (2) that the statute upon which Appellee's claim is based does not create liability in this case; and (3) that the evidence does not support the judgment. The jurisdiction of this Court over the appeal is based exclusively on the first of these alleged errors since the others, by themselves, are within the appellate jurisdiction of the Court of Appeals, rather than the Supreme Court. Compare Ga. Code §2-3104 with Ga. Code §2-3108. This Court has repeatedly and consistently held that where appellate jurisdiction in the Supreme Court is based upon a constitutional issue which the Court finds has not been timely raised in the court below, then it necessarily follows that the Supreme Court lacks jurisdiction over the appeal and the remaining issues must be transferred to the Court of Appeals for a decision. Burnett v. Burnett, 209 Ga. 353 (1952); Taylor v. Smith, 211 Ga. 5 (1954); Hammock v. Davidson Granite Company, 218 Ga. 622 (1963).

If this Court does not change its ruling in division one of the opinion that the constitutional issue was not timely

raised, then the Court does not have jurisdiction over the other errors enumerated in the appeal. Accordingly, division two and three of the opinion, dealing with those alleged errors, should be vacated and the case transferred to the Court of Appeals.

B. This Court's ruling that Appellant's constitutional defense was not timely, although it was raised in his amended answer prior to the first consideration of the case by the lower court, is contrary to prior decisions of this Court.

Appellant's constitutional defense was raised by amendment to his answer prior to the trial of the case or, for that matter, prior to any hearing by the court below. Nevertheless, this Court found that since the amendment was filed several years after discovery, the constitutional defense was not timely raised. This ruling is without precedent.

The Court correctly stated the general rule that constitutional challenges must be raised "at the first opportunity" Brackett v. State, 227 Ga. 493 (1971). The many decisions of this Court applying this rule have uniformally understood "first opportunity" to refer to the first opportunity for a ruling in the court below. Thus, for example, a defendant who is aware of a constitutional challenge that will affect jury instructions can not wait until after the jury charge to make that challenge. Boyers v. State, 198 Ga. 838, 843 (1945). Nor can he raise a constitutional claim after verdict. Brackett v. State, supra. Accordingly, he can not raise the constitutional challenge in a motion for a new trial. Loomis v. State, 203 Ga. 394, 405 (1948); Woods v. State, 222 Ga. 321 (1966).

What these and all of the other related cases have in common is that the constitutional challenge was raised after a ruling, verdict, judgment, etc., that would have been affected

by the challenge if it had been brought to the lower court's attention earlier. The Court's approach to these situations is consistent with the general policy on the raising of claims and defenses generally and evidentiary objections in particular: a litigant waives a claim or objection if he allows the court to make a ruling or allows evidence to be introduced without first making the relevant claim or objection known to the court.

Appellant is unaware of any case in which a constitutional claim was raised by pleading before any hearing in the action, was then asserted during the trial of the case, was ruled on by the trial court, and was nevertheless held to be untimely. The radical change in the test for timeliness brought about by this Court's ruling raises serious problems regarding application of the test. Under the former rule, timeliness was determined with reference to the first opportunity of the trial court to rule on the issue. Under the new rule, the trial court must first determine when the party became aware of the facts on which the constitutional claim is based and then decide whether the claim was pleaded quickly enough thereafter.

What is the standard by which the courts are to determine how long a party can wait to plead the claim? For example, in the instant case, Appellant's amendment raising the constitutional challenge was timely under the Civil Practice Act, which provides that pleadings may be amended at any time prior to the pre-trial order and that amendments relate back in time to the date of the original pleading. Ga. Code §81A-115 Yet the Court found Appellant's amendment untimely. If, then, a defendant is aware of a constitutional challenge when served with the complaint, is the challenge untimely if he waits until the end of the thirty-day answer period to file the pleading containing the challenge? Under the rule announced in this

Court's opinion, it is not at all clear whether the resolution of the question should be different in these two instances.

These issues, of course, do not arise under the former rule: If the litigant is aware of facts that form the basis for the constitutional challenge and if the case has reached a point where that constitutional challenge is relevant to a ruling by the lower court, then the litigant must raise the challenge at that time or waive it. 1/

The trend of this Court's decisions in recent years has been to disallow procedural bars to presenting one's claims where there is no showing of harm either to the court or the other litigants. E.g., Justice v. Dunbar, 244 Ga. 415 (1979). The ruling of the Court in this case represents a clear retreat from that trend since Appellant has been precluded from having a determination of his constitutional challenge without any showing that the manner of raising that challenge either inconvenienced the trial court or prejudiced the rights of the opposing party.

Because the Court's rulings fundamentally changes the former rule regarding timeliness in a manner that raises enormous problems of application and serves no identificable interest of

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1/ Additionally, the litigant will generally be required to make the challenge in writing in a pleading or amendment thereto. Hazlehurst v. Southern Fruit Distributors, Inc., 46 Ga. App. 453 (1933). This allows the reviewing court to determine that the constitutional issue was raised in a precise manner. Again, Appellant complied with this requirement.

the courts and because this rule represents a return to the days when unnecessary procedural rules regularly defeated the raising of meritorious claims, Appellant asks that this Court vacate division one of its opinion and decide the constitutional issue.

C. The ruling of this Court that Appellant is not entitled to consideration of his constitutional defense, although it was raised in his amended answer prior to the first consideration of this case by the lower court, denies Appellant due process of law in violation of the Fourteenth Amendment to the United States Constitution.

When the constitutionality of a statute is drawn into question, it is the responsibility and obligation of the judiciary to resolve that question. Carter v. Carter Coal Co., 298 U.S. 238, 296-97 (1936). The United States Supreme Court has held that a ruling of a state Supreme Court, which effectively prevents a litigant from presenting a claim, may violate the due process clause of the Fourteenth Amendment to the United States Constitution. 2/ Saunders v. Shaw, 244 U.S. 317 (1917). This principle is even more critical when the barred claim is constitutional in nature.

A litigant may waive his right to assert a claim or defense if that waiver is knowingly made. Henry v. Mississippi, 379 U.S. 443 (1965). Where, however, a procedural rule deems a claim or defense waived if it is not timely presented to the

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2/ "[N]or shall any State deprive any person of life, liberty, or property without due process of law."

trial court, such a rule will be considered valid only if it serves a legitimate state interest. Id. at 447-48. In determining whether the procedural rule in question serves a legitimate state interest, both the rule in general and its particular application in the instant case are to be scrutinized. Id. at 448-49.

In general, the rule in question here -- that a constitutional challenge be timely presented in the lower court -- serves the important state interest in judicial economy by requiring that the challenge be presented to the trial court at the first opportunity for the court to consider it. However, as construed and applied in this case, the rule does not serve that purpose. The constitutional challenge raised by Appellant was filed in writing prior to the first hearing on the case in the trial court. Consequently, Appellant did not fail to make his constitutional challenge known to the court at the first opportunity for the court to rule on it. 3/

3/ The court notes in its opinion that the case was continued four times. Of course, these continuances were not unilateral actions on the part of Appellant; rather, they were the result of decisions agreed to by both parties and were requested as a result of various matters deemed important by the parties (discovery, settlement possibilities, etc.). There is no support for any inference that the trial of the case was in any way delayed because of the timing of Appellant's constitutional challenge. As the Court correctly suggests, the timing of the challenge was wholly the result of the appearance of the United States Supreme Court's decision in Orr v. Orr.

In short, under the court's ruling, Appellant cannot obtain a decision on his constitutional defense. Since this bar is the result of a procedural rule that serves no legitimate state purpose, the decision of this court denies Appellant due process of law.

D. This Court's ruling that Appellant is not entitled to consideration of his constitutional defense, although that defense was raised in his amended answer prior to the first consideration of the case by the lower court, denies Appellant rights available to other similarly situated persons and, therefore, deprives him of equal protection of the laws in violation of the equal protection clause of the Fourteenth Amendment to the United States Constitution.

Appellant belongs to the general class of litigants who have raised a constitutional challenge by way of pleading prior to the first hearing in the case by the trial court. It is, however, clear from the instant ruling of this Court that some members of that group will be deemed to have timely raised their challenge while others will have their challenge considered untimely. Unless this different treatment of similarly situated litigants is rationally related to a legitimate state purpose, it is violative of Appellant's right to equal protection of the law under the Fourteenth Amendment to the United States Constitution. 4/ Trimble v. Gordon, 430 U.S. 762 (1977).

4/ "[N]or shall any State ... deny to any person within its jurisdiction the equal protection of the laws."

For reasons stated in section B above, it is virtually impossible to even determine objectively who within that general class of litigants will have timely raised their constitutional claims. Moreover, for the reasons stated in section C above, the application of the rule in a manner that bars consideration of Appellant's constitutional challenge does not serve a legitimate state purpose. Accordingly, the ruling of this court in division one of its opinion denies Appellant equal protection of the laws in violation of the Fourteenth Amendment.

For all the reasons stated above, Appellant prays that this Court vacate its decision of February 26, 1980, and grant Appellant's Petition for Rehearing.

Respectfully submitted,

Richard K. Greenstein

RICHARD K. GREENSTEIN

ATTORNEY FOR APPELLANT

IN THE STATE COURT OF FULTON COUNTY

STATE OF GEORGIA

FULTON DEKALB HOSPITAL AUTHORITY T/A GRADY MEMORIAL HOSPITAL, Plaintiff	)	
v.	)	CIVIL ACTION NO. 520625
GLOVER ALLISON, Defendant.	)	

ORDER AND JUDGMENT

This case was tried before the Court sitting without a jury on March 26, 1979. At the conclusion of the evidence and argument, the Court allowed the parties time to file legal memoranda concerning several issues in the case. Defendant filed the same but none was presented by Plaintiff.

Upon a consideration of the evidence, first of all, the Court finds as follows:

1. Defendant's daughter was an unmarried minor at the time of the birth of her illegitimate child on August 19, 1974.

2. Plaintiff's suit is for the balance due on the account for rendering those medical services.

3. At the time Defendant's daughter was admitted to the hospital on the date of the birth, she was brought by her mother, Defendant's wife, who provided the information to the admitting attendant, concerning the name of the minor's parent, the parents' address and telephone number.

4. The services were rendered and the bill was sent; according to the testimony, some small payment was made, and it is a reasonable inference that defendant or his wife made the payment since the bills were addressed to them. There is no evidence that Defendant or his wife denied liability when the statements were sent in 1974.

5. When Defendant's minor daughter became pregnant, she temporarily lived elsewhere and supported herself, awaiting the birth outside of her parents' home because of the sensitiveness of her condition.

6. After the birth, she returned to her parents' home and became supported by them, having stopped working.

7. When Defendant's minor child was admitted to the hospital on August 19, 1974, she made no agreement to be responsible for the charges.

Issues and Conclusions of Law:

1. Whether Plaintiff failed to present admissible evidence to plead each element of its case. The evidence showed that the services were rendered to Defendant's minor child, that the amount claimed is due and owing, that demand was made, that it has not been satisfied, and that Defendant is liable therefor. Each element of the case having been proved, Plaintiff is entitled to judgment.

2. Whether Ga. Code §74-105, stating that it is the duty of the father to provide for the maintenance, protection, and education of his child until majority, is unconstitutional pursuant to Orr v. Orr, 47 Lw 4224, US Sup. Ct #77-1118, 3/5/79. Sims v. Sims, Ga. Sup. Ct. #34242, Ga. Sup. Ct., 3/8/79. The services were rendered and debt incurred in 1974, long before the cases relied upon by Defendant. His common law obligation to support his minor child, insofar as it existed before these latter decisions, was not erased thereby.

3. Whether Defendant's minor daughter became emancipated prior to incurring the medical services, so as to relieve her father of liability for them. The Defendant's daughter did not become emancipated by her temporary removal from the home and retention of her earnings. Even if there was evidence of consent of Defendant to her receiving the proceeds of her own labor, as provided by Ga. Code §74-108, it did not emancipate her to the extent that he became free of his statutory obligation to care for her. Failing to exercise his parental power to receive the monetary fruit of her labor did not thereby relieve him of his responsibility for medical services rendered to his minor daughter at the request of her other parent.

4. Whether the father of the illegitimate grandchild is responsible under Georgia law for the payment of "lying-in" expenses, rather than Defendant.

Whether or not the illegitimate grandchild's father is liable is not at issue in this case, because there is no evidence that he has been required to pay the lying-in expenses. Ga. Code §74-9901. It may be that Defendant would have a claim against him, if Defendant paid, under the proper circumstances. But that is not the issue here. Therefore, it is the VERDICT of the Court that Plaintiff is entitled to recover in the amount claimed, and therefore

JUDGMENT is granted to Plaintiff in the amount of $1570.29 principal and costs.

A copy hereof shall be mailed to each counsel.

This the 19th day of April, 1979.

Dorothy T. Beasley

DOROTHY T. BEASLEY
Judge, State Court of Fulton County

IN THE STATE COURT FOR THE COUNTY OF FULTON

STATE OF GEORGIA

FULTON DEKALB HOSPITAL AUTHORITY T/A GRADY MEMORIAL HOSPITAL,

Plaintiff,

-Versus-

GLOVER ALLISON,

Defendant.

CIVIL ACTION

FILE NO.: 520625

ORDER

This case was heard on Defendant's Motion for New Trial and amendment thereto, on June 13, 1979. Thereafter, the transcript of the trial proceedings was filed. Based on the Motion, arguments of Counsel, and a Supplemental Brief of Defendant, the Motion as amended is ORDERED DENIED. None of the grounds raised required a new trial.

Georgia Code §74-105 is not unconstitutional as it applies to this case. The debt for hospital services was incured in 1974. The father of the minor child cannot escape his responsibility for necessary medical treatment provided to her in 1974 by claiming in 1979 that her mother also should be equally responsible.[1)]

The evidence did not support the contention that Defendant's daughter was an emancipated minor. The record shows that the child was treated November 30, 1974 and gave her father's address as the "billing address." Defendant was listed as her father and the person to be billed. This information was provided to Plaintiff by the child. (T-42). On August 24, 1975, similar data was provided by the patient (T-43). The same was provided on July 23, 1974 (T-46) and on August 19, 1974 (T-47); on the latter date, the information was obtained by Plaintiff from the mother. Information provided when the child was admitted for the delivery was that she stayed with her parents during pregnancy, was living with her father and mother, and had no occupation (T-51). The same information was provided by her mother on May 15, 1974 (T-53) and by the minor on June 5, 1974 (T-54). Her prenatal contact record of June, 1974 shows that she provided information that she was living with her parents, that she had no income, no occupation, that her parents were her source of income, and that her parent's address was her address (T-55).

The testimony also was that Defendant was the father of the minor patient for who the services was provided (T-14).

1) See editorial note to Title 30, Georgia Code, Re: Georgia Laws 1979, S. B. no. 18, Act no. 86.

Defendant is not relieved of his responsibility for caring for the minor child's medical needs by Georgia Code Section 74-9901.

None of the other grounds raised require a new trial to be granted.

A copy hereof shall be mailed to counsel for each party.
This the 31 day of July, 1979.

Dorothy T. Beasley

DOROTHY T. BEASLEY
Judge, State Court of Fulton County